

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Planned Parenthood Southwest Ohio Region et al.,	:	Case No. 1:19-cv-118
Plaintiffs	:	Judge: Michael Barrett
vs.	:	<u>AMENDED NOTICE TO COURT</u>
	:	<u>REGARDING DEFENSE</u>
	:	<u>PROVIDED BY THE</u>
David Yost, Attorney General of Ohio et. al.,	:	<u>COUNTY PROSECUTORS'</u>
Defendants		<u>OFFICES</u>

Now come the Ohio Prosecuting Attorneys for Cuyahoga County, Franklin County, Hamilton County and Montgomery County, through counsel, and hereby give Amended Notice to the Court regarding the position of these County Defendants in this matter.

1. Procedural Posture

On February 14, 2019, Plaintiffs brought this action against David Yost, Ohio's Attorney General and the prosecutors of Cuyahoga, Franklin, Hamilton and Montgomery Counties in Ohio in their official capacities. On February 15, 2018, the Court held a scheduling conference by telephone where Plaintiffs and Defendants were represented by counsel, other than Defendant Cuyahoga County. Plaintiffs seek a declaration as to the constitutionality of newly enacted R.C. §2919.15 which bans the dilation and evacuation procedure as a method of abortion after 15 weeks of pregnancy. Plaintiffs also seek injunctive relief restraining Defendants and their successors in office from enforcing §2919.15. It is noted that although Ohio has 88 counties and therefore 88 elected county

prosecutors, Plaintiffs have only named four county prosecutors as defendants in this action.

2. The Responsibilities of Ohio Attorneys General and Ohio County Prosecutors under Ohio Law.

Pursuant to R.C. § 309.08 the prosecuting attorney of each Ohio county shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party. If a law is constitutional, the prosecuting attorney will enforce it on behalf of the state. Conversely, if a law is deemed unconstitutional, the prosecuting attorney will not prosecute violations of the unconstitutional law. It is neither the role nor the duty of the prosecuting attorney to defend the challenged constitutionality of laws proposed by the General Assembly.

Pursuant to R.C. § 109.92 the Ohio attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested. Under the current posture of this legal challenge, it is the responsibility of the Attorney General, not the Prosecutor, to defend the challenged constitutionality of laws proposed by the General Assembly. In the action before the Court, the Ohio Prosecutors' Offices will rely on the office of the Attorney General to defend the constitutionality of the legislation at issue in this case.

3. Plaintiffs' waiver of claim for attorneys' fees against the Ohio Prosecutors' Offices.

Plaintiffs acknowledge that the defense of the Ohio statute is solely within the duty of the Ohio Attorney General. As such, Plaintiffs advise the Court that should Plaintiffs prevail in their challenge to the Ohio statute, Plaintiffs will not bring a claim for attorneys' fees against the Ohio Prosecutors' Offices specifically named in this litigation.

4. The filing of this Notice will acknowledge service of summons in this matter, but the County Prosecutors' Offices do not intend to file an Answer in this action, as it is

incumbent on the Attorney General to defend the constitutionality of the enacted statute, ORC 2919.15, not the named County Prosecutors' Offices. Any such answer would necessitate the County Prosecutors denying the allegations in the Complaint for lack of knowledge which would serve no benefit to the litigation between the real parties, Planned Parenthood and the State of Ohio.

JOSEPH T. DETERS
HAMILTON COUNTY PROSECUTING ATTORNEY

By: /s/ Pamela J. Sears
Pamela J. Sears 0012552
Michael G. Florez 0010693
Jim Barbieri 96967
Assistant Prosecuting Attorneys
Hamilton County
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202
(513) 946-3082 Sears
(513) 946-3229 Florez
(513) 946-3037 Barbieri
(513) 946-3018 Fax

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

By: /s/ Mary E. Montgomery
Mary E. Montgomery, (0069694)
Assistant Prosecuting Attorney
Montgomery County Prosecutor's Office
301 West Third Street
P.O. Box 972
Dayton, Ohio 45422
Telephone: (937) 496-7797
Fax Number: (937) 225-4822
E-mail: montgomerem@mcOhio.org

**RON O'BRIEN
PROSECUTING ATTORNEY**

By: /s/ Arthur J. Marziale, Jr.
Arthur J. Marziale, Jr., (0029764)
Assistant Prosecuting Attorney
Franklin County Prosecutor's Office
373 South High Street, 13th Floor
Columbus, Ohio 43215-6318
Telephone: (614) 525-3520
FAX number: (614) 525-6012
E-mail: amarziale@franklincountyohio.gov

**MICHAEL C. O'MALLEY, Prosecuting
Attorney of Cuyahoga County**

By: /s/ Charles E. Hannan
CHARLES E. HANNAN (0037153)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Tel: (216) 443-7758/Fax: (216) 443-7602
E-mail: channan@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2019 I electronically filed the foregoing Amended Notice with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Mary E. Montgomery
Mary E. Montgomery, (0069694)
Assistant Prosecuting Attorney